

CALIFORNIA PERFORMANCE REVIEW TESTIMONY
by Donald Specter, Director, Prison Law Office
September 10, 2004
Long Beach, CA

I am the Director of the Prison Law Office, a non-profit public interest law firm that provides free legal services to California prisoners concerning their conditions of confinement. For almost 30 years this office has been scrutinizing the operations of the California Department of Corrections, the Board of Prison Terms or the California Youth Authority. During this time, we have brought numerous successful class action lawsuits against these agencies for constitutional and statutory violations. These lawsuits literally have changed the face of some prisons and required the agencies to completely overhaul the way they do business in some very important areas, such as health care, use of force, parole and the rehabilitation of young offenders. As a result of these cases we inspect the prisons virtually every day for compliance with court orders and we meet constantly with high-ranking prison officials about prison policies and procedures. There are several reasons that our lawsuits have been so successful and many of them relate to the IRP recommendations.

The Governor has said that he wants accountability in our correctional agencies. Right now there is a fundamental lack of accountability in the state's correctional agencies that permits unconstitutional policies and practices to germinate and grow. This is caused in part by a diffuse decision-making structure that hides individual responsibility and therefore accountability. This will only get worse if the CPR follows

the IPR's reorganization to create a civilian commission to run the Department of Correctional Services. The Governor needs one individual to hold responsible for its operation. In other states, this type of organization has not worked, with one judge appointing the Governor as a receiver for the entire prison system because that state's commission was so unresponsive. This is not to say, however, that civilian oversight is a bad idea. While it could properly function as a watchdog over corrections, it should not have the ultimate decision-making authority

Accountability also will suffer if the Senate's power to confirm all prison wardens is removed. The confirmation process is consistent with two of the Governor's goals: accountability and transparency. It makes the wardens, and corrections itself, immediately accountable to elected representatives and it promotes transparency by opening to periodic public scrutiny the operations of the prisons. On a practical level, it also permits the Senate to provide much needed input into critical policies and procedures.

The single biggest reason that our lawsuits have been so successful and that corrections has so many problems was not even mentioned by the IRP – overcrowding. Twenty years ago there were 20,000 prisoners in 12 relatively small prisons. Now there are over 8 times that number in 32 prisons, some of which are among the largest in the world. During this same period, the rate of serious crime has dropped by half and the rate of violent crime has dropped by a third.

Prisoners are being housed in every nook and cranny that's available.

Gymnasiums and day rooms have been converted into dormitories. Plans are in the works to convert areas previously used for rehabilitative programs into more dormitories. This plague of overcrowding means that essential services, such as health care, mail, laundry, suffer terribly and prison officials lack the flexibility necessary to manage a very complex and diverse population. Overcrowding has so overburdened the prison system that rehabilitation has become nothing more than an afterthought.

We are spending close to \$6 billion a year in operating costs alone to run a prison system that incapacitates, but fails to meet any of its other key objectives, such as rehabilitation. In these difficult fiscal times we cannot continue to look at prisons as an infinitely expandable system. We have to view each prison cell as a scarce resource; one that comes at the expense of other state needs, such as educating our children. The question we must ask is whether we are spending our money wisely.

The closest the IRP comes on this subject is to recommend a presumptive sentencing scheme, which would permit prisoners to get out earlier if they fulfill certain conditions. This recommendation is nothing but another label for the existing system, which permits prisoners to earn credits against their sentence for participating in certain activities, such as work or school. CPR should recommend to the Governor that he call for a complete re-evaluation of our sentencing scheme to replace the existing system which is inequitable, arbitrary, too costly and, most importantly, has no significant effect on public safety.

Although prison overcrowding is at the root of many of the problems of

corrections today, the IRP properly focuses on some of the many problems that face the CDC, four of which permeate the entire system. First, top prison officials cannot properly manage the system because they lack data. Put bluntly, the people running the department in Sacramento do not know in many meaningful ways what is happening in the field. There is no management information system to collect critical quantitative data and there is no effective mechanism for problems within the system to be recognized and remedied. In many ways, the Prison Law Office fills this gap through new lawsuits and the monitoring of existing court orders. The CRP should recommend that the prison system be automated as soon as possible and that technology be made a key priority.

Second, top prison managers are not held accountable for their decisions. We have direct experience with Wardens and other administrators who for years have failed miserably to comply with court orders and prison policies, with absolutely no adverse consequences. Wardens and other high level administrators need report cards that are based on performance indicators.

Third, state salary levels are so low for top managers that it is impossible to attract people from outside state service. This situation is particularly acute in health care, which is a billion dollar operation. Three out of the last five deputy directors for health care were not even physicians; they were ex-wardens or administrators with no formal training or prior experience in health care operations.

Fourth, managers do not have control over their employees. There is essentially no system for getting rid of the few employees who actively participate in misconduct or

who are not productive. And, the current contract with the union permits employees to bid, based on seniority, for 70% of the assignments. No organization can function properly when the employer can only assign three out of every ten employees, including supervisors, to positions. In many cases this means that employees with the least experience are placed in the most difficult positions.

Two other recommendations by the IRP deserve comment. The IRP recommends that the CDC be exempt from promulgating regulations through the same public process used by every other state agency, the Administrative Procedures Act (APA). The APA provides the public an opportunity to comment before regulations are adopted. The CDC has had many problems complying with this APA, but it is not the APA which is the problem; it is the CDC's incompetence. The APA fosters accountability, transparency and efficiency; it must remain applicable to one of the most closed institutions in our state government.

Finally, the IRP's recommendation about the inmate grievance system, which is universally acknowledged as a failure, is too timid. More specific regulations are not going to solve the problems, which include the failure to provide any meaningful responses in a timely way, the outright destruction of those grievances by employees and the almost complete inability by CDC management, both in the prisons and at headquarters, to use the grievances to identify and respond to serious problems. The inmate grievance system should be completely overhauled and serious consideration should be given to having an outside agency be responsible for its operation.